

EMPLOYMENT AGREEMENT

This Agreement is made as of the 29th day of November, 2018.

BETWEEN:

DR. ALAN SHEPARD

("Dr. Shepard")

AND:

**THE BOARD OF GOVERNORS OF
THE UNIVERSITY OF WESTERN ONTARIO**

(the "Board")

WHEREAS, pursuant to the *An Act Respecting the University of Western Ontario* (the "*Act*"), the Board has the power to appoint the President & Vice-Chancellor (the "President") of the University of Western Ontario (the "University") and to set the terms of the appointment;

AND WHEREAS, in pursuance of such power, the Board wishes to consider for approval the appointment of **Dr. Shepard** as President of the University as expeditiously as practicable after this Agreement is fully executed. If the appointment is approved by the Board, **Dr. Shepard's** appointment as President shall be based on the terms and conditions set out herein;

AND WHEREAS, the parties understand that this agreement is subject to the provisions of the *Broader Public Sector Executive Compensation Act, 2014* (the "*BPSECA*") which establishes compensation restraint applicable to the position of President, and Regulation 406/18 under the *BPSECA* (the "*BPSECA* Regulation") which became effective on August 13, 2018;

AND WHEREAS, the parties understand that in addition to the compensation restraint provisions of the *BPSECA*, and the *BPSECA* Regulation the terms and conditions of **Dr. Shepard's** appointment as President will be subject to any new or amended compensation restraint legislation enacted by the Ontario Government;

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, effective upon and subject to the approval of the appointment of **Dr. Shepard** as President by the Board, the parties hereto agree as follows:

1. EMPLOYMENT and TERM

- 1.1 **Dr. Shepard** will be employed as the President on a full-time basis for a term commencing on July 1, 2019 and ending on June 30, 2024 (the "Term"). As President, **Dr. Shepard** will report to the Board in accordance with the policies established by the Board from time to time. In accordance with the *Act*, **Dr. Shepard** in his capacity as President shall be the Chief Executive Officer of the University and shall have supervision over and direction of the academic work and general administration of the University and the teaching staff thereof, and the officers and servants thereof, and the students thereof, and shall also have

such other powers and as from time to time may be conferred upon or assigned to **Dr. Shepard** by the Board. Without limiting the generality of the foregoing Special Board Resolution No. 10 (attached hereto as Appendix "A") sets forth powers and duties of the President as approved by the Board and amended from time to time.

- 1.2 **Dr. Shepard's** appointment may be renewed for a second term, upon mutual agreement in writing of the parties and in accordance with Board procedures as amended from time to time, including the procedures set out in the Board Resolution entitled "Presidential Review" dated January 26, 1995 (attached hereto as Appendix "B").
- 1.3 **Dr. Shepard** acknowledges that in his capacity as President he is a fiduciary and agrees that he shall devote his full time and skill and attention to the duties and responsibilities of the role of President. **Dr. Shepard** further agrees and acknowledges that the responsibilities and duties of his position are a full-time role and that he will not engage in any other employment or serve in any other capacity that interferes or conflicts with the provision of his services under this agreement or provide services to any person, corporation or enterprise, with or without remuneration, whose interests are competitive or in conflict with the interests of the University. **Dr. Shepard** agrees that he shall disclose in writing and in advance any proposed outside activities to the Chair of the Board, who shall have the sole discretion to authorize **Dr. Shepard** to engage in the proposed outside activities.
- 1.4 Coincident with his appointment as President **Dr. Shepard** will also be appointed as a tenured Full Professor in the Department of English in the Faculty of Arts and Humanities effective July 1, 2019, pursuant to and in accordance with the relevant policies and practices of the University for such an appointment to be made.
- 1.5 In exercising the powers and functions of President, **Dr. Shepard** shall follow the direction of the Board and shall be required to comply at all times with the prevailing laws. **Dr. Shepard** shall faithfully observe and implement all by-laws, policies and resolutions of the Board. **Dr. Shepard** shall also be committed to achieving those performance objectives developed by the Senior Policy and Operations Committee of the Board (the "SPOC") in consultation with **Dr. Shepard** as well as such other objectives, duties and responsibilities as may be assigned by the Board from time to time.
- 1.6 **Dr. Shepard** agrees that as President, he is bound by the relevant policies, procedures, and practices which govern the employment relationship between **Dr. Shepard** and the Board, which may change from time to time.
- 1.7 There will be an annual performance appraisal of **Dr. Shepard**, with the annual process to be determined by the SPOC based on achievements with respect to performance objectives developed by the SPOC.

2. **Remuneration**

- 2.1 **Base Salary:** **Dr. Shepard** will receive an annual base salary of \$440,000 unless or until such time as the *BPSECA* Regulation is amended or terminated, after which time **Dr. Shepard** shall receive an annual base salary, and any increases to same, pursuant to and in accordance with any new or amended compensation restraint legislation or regulation enacted by the Ontario Government, with such base salary and any increases to be determined by the SPOC in accordance with its policies and review processes as may be

amended from time to time for determining the salaries of senior officers of the University.

- 2.2 **Bonus:** **Dr. Shepard** will be eligible to receive an annual cash bonus in an amount of up to ten (10%) percent of base salary, as determined in the discretion of the SPOC, based on achievements with respect to performance objectives developed by the SPOC in consultation with **Dr. Shepard**, unless or until such time as the *BPSECA* Regulation is amended or terminated, after which time **Dr. Shepard** will be eligible to receive an annual cash bonus pursuant to and in accordance with any new or amended compensation restraint legislation or regulation enacted by the Ontario Government as determined by the SPOC in accordance with its policies and review processes as may be amended from time to time for determining cash bonuses for senior officers of the University.
- 2.3 **Transition to Faculty after Term as President:** Upon the expiry of his term as President and upon the completion of paid Administrative Leave, **Dr. Shepard** will have the option of assuming his duties as a tenured Full Professor in the Department of English, in the Faculty of Arts and Humanities or voluntarily resigning or retiring from his employment with the University. If **Dr. Shepard** assumes duties as a tenured Full Professor at Western University he will enter the faculty bargaining unit. In the event **Dr. Shepard** assumes his duties as a Full Professor, his faculty salary at such time shall be determined as follows: Effective July 1, 2019 **Dr. Shepard** will be considered to have a notional salary as a faculty member of \$260,000 which notional salary shall increase from July 1, 2020 onward on the same basis as if he were a member of the faculty covered by the collective agreement. At the time he assumes his duties as a Full Professor **Dr. Shepard's** faculty salary will be his notional salary increased as set out above. If **Dr. Shepard** assumes his duties as a Full Professor his terms and conditions of employment will become subject to the provisions of the collective agreement between the University and UWOFA.

3. **Research / Professional Activities Allowance**

In accordance with and subject to the University's policies the University will provide **Dr. Shepard** with a research/professional activities allowance equal to \$15,000.00 annually, less applicable deductions, to be used for expenses associated with **Dr. Shepard's** research and/or professional activities.

4. **Expense and Travel Reimbursement**

Expenses, including travel expenses, related to **Dr. Shepard's** responsibilities will be reimbursed, with receipts, and subject to the approval of the Chair of the Board in accordance with University policy regarding expenses.

5. **Vacation Entitlement**

Dr. Shepard is entitled to one months' vacation, during each 12 month period of his term of appointment. Unless he and the Chair of the Board agree otherwise in writing, vacation is non-cumulative and must be used during each 12-month period that it is earned. **Dr. Shepard** will schedule his vacation in consultation with the Chair of the Board.

6. **Administrative Leave**

Dr. Shepard shall accrue paid administrative leave at a rate of 10.4 weeks per year (which equals a total period of paid administrative leave of 12 months after 5 years) for the purposes of re- engaging in **Dr. Shepard's** research and scholarly activities on a full-time basis and to prepare to return to regular teaching as a faculty member for the benefit of the University and its students after completion of a five (5) year term as President. Administrative Leave shall be taken immediately after the end of **Dr. Shepard's** five (5) year term as President, or any extended or renewed term as President. During the period of Administrative Leave **Dr. Shepard** shall receive the base salary he received as President as of the date the term of President ended and will continue to be eligible for applicable benefit plans. Administrative Leave cannot be monetized and paid out in cash in whole or in part. If upon the end of **Dr. Shepard's** five (5) year term as President he accepts employment elsewhere he will waive entitlement to any period of paid Administrative Leave. If during the period of **Dr. Shepard's** Administrative Leave he commences employment elsewhere he shall waive any remaining period of paid Administrative Leave.

7. **Benefits**

Dr. Shepard will be eligible to participate in the University's Benefit Programs on the same basis as non-managerial academic employees (see Appendix "C" attached hereto).

8. **Pension**

8.1 In this section:

"Contract End Date" shall mean the earliest of the following dates, as applicable:

- (i) the end of any Administrative Leave during which **Dr. Shepard** receives base salary in accordance with section 6 above, provided that if **Dr. Shepard's** appointment is extended or renewed for a second term, the date shall instead be the end of any Administrative Leave during which **Dr. Shepard** receives base salary after the end of the extension or the second term,
- (ii) the date **Dr. Shepard** is notified by the University that his appointment is being terminated pursuant to section 13, provided that if **Dr. Shepard** is terminated by the University on a without cause basis pursuant to section 13.3 or for frustration pursuant to section 13.4, then the date shall be the end of the statutory notice of termination period as required under the *Employment Standards Act, 2000*, as applicable,
- (iii) the date mutually agreed by **Dr. Shepard** and the Board as the end of **Dr. Shepard's** appointment pursuant to section 13.1,
- (iv) the effective date of **Dr. Shepard's** resignation pursuant to section 13.1 or,
- (iv) the date of **Dr. Shepard's** death.

"Eligible Service" means, subject to section 8.4, the number of years that **Dr. Shepard** has served as President plus any period of Administrative Leave during which **Dr. Shepard** receives base salary in accordance with section 6. For greater certainty, Eligible Service shall not include any period following the Contract End Date.

"Highest Average Earnings" means the annual average of the Pensionable Earnings paid to **Dr.**

Shepard in the highest 36 calendar months of Eligible Service. If **Dr. Shepard** has not completed 36 calendar months of Eligible Service preceding the Contract End Date, then his Highest Average Earnings means the annual average of Pensionable Earnings paid to **Dr. Shepard** over all months of Employment as President.

"Pension Start Date" shall mean the first of the month following the Contract End Date.

"Pensionable Earnings" shall mean the amount of salary and performance pay payable to **Dr. Shepard** by the University before any deductions.

"Total Disability" and "Totally Disabled" shall have the meanings set out in the University's long term disability plan, as amended from time to time.

"Spouse" shall be as defined in The University of Western Ontario Academic Staff Pension Plan.

8.2 **Dr. Shepard** will be eligible to participate in The University of Western Ontario Academic Staff Pension Plan ("Plan") and in the University's Supplemental Pension Arrangement ("Supplemental Pension Arrangement") subject to the terms and conditions thereof, each as amended from time to time.

8.3 In addition to **Dr. Shepard's** participation in the Plan and in the Supplemental Pension Arrangement, **Dr. Shepard** will be eligible to receive an additional annual pension payable in equal monthly instalments, called the "Special Executive Pension", from and after the Pension Start Date, calculated and paid as follows:

(a) The annual Special Executive Pension, if any, will equal X minus Y, where

"X" is the amount obtained by multiplying Eligible Service, Highest Average Earnings and 2%, and

"Y" is the amount of the annual annuity that the University determines in its discretion could be purchased by converting (without deduction for tax) the sum of **Dr. Shepard's** account balance in the Plan and notional account balance in the Supplemental Pension Arrangement into an annuity as of the Contract End Date, using a discount rate and any other factors or assumptions as may be recommended by the University's actuary for such purpose (where the annual annuity that could be purchased should provide the same form of payment as described in paragraphs 8.3 (b) and 8.3 (c)),

and provided that the annual Special Executive Pension shall not exceed the amount of the annual Special Executive Pension payable by the University to the person who held the position of President immediately prior to **Dr. Shepard**, and further provided that the annual Special Executive Pension cannot be less than zero.

- (b) Should **Dr. Shepard** have a Spouse on his Pension Start Date, if he is survived by that Spouse, the surviving Spouse shall be entitled to an annual survivor pension equal to 60% of the Special Executive Pension calculated pursuant to paragraph 8.3(a), which survivor pension shall commence on the first of the month coincident with or next following **Dr. Shepard's** date of death.
- (c) Should **Dr. Shepard** die before the Pension Start Date and have a Spouse on the date of death, the Spouse will be entitled to an annual survivor pension equal to 60% of the amount of the Special Executive Pension calculated pursuant to paragraph 8.3(a), which survivor pension shall commence on the first of the month coincident with or next following the Pension Start Date.
- (d) Special Executive Pension payments, including survivor benefits payable to the surviving Spouse, shall be made out of the University's general funds, and such payments shall not be secured or separately held.

8.4 Should **Dr. Shepard** become Totally Disabled while employed as President, then for the duration of the Total Disability or such other period as specified below the following will continue as if he were actively employed and in receipt of Pensionable Earnings that were in effect immediately prior to commencement of the Total Disability.

- (a) Participation in the Plan, with all contributions being made by the University;
- (b) Participation in the Supplementary Pension Arrangement;
- (c) Credit for service under the Special Executive Pension arrangement described in paragraph 8.3(a) for the first 24 months in which **Dr. Shepard** is Totally Disabled or until the Contract End Date, whichever occurs first.

8.5 All amounts payable pursuant to this section 8, if any, are subject to applicable statutory deductions.

9. **Car**

The University will lease a non-luxury vehicle including to support travel to and from the airport and meetings with stakeholders within driving distance of the University. Personal use of the vehicle shall be a taxable benefit.

10. **Housing**

The President will live at the University owned property, Gibbons Lodge, in order to develop and manage relationships with University stakeholders. The housing benefit is reported as a taxable benefit. The Board may enact reasonable policies with respect to the use and occupancy of Gibbons Lodge and **Dr. Shepard** agrees to observe such policies as may be developed from time to time.

11. **Confidentiality**

Dr. Shepard acknowledges and agrees that in his capacity as President he will receive and be entrusted with confidential information. **Dr. Shepard** agrees that all confidential information disclosed to him shall be held in the strictest confidence and that he shall not, during his employment with the University, or at any time thereafter, communicate or disclose to any person, firm, other than the University, any confidential information. Moreover, **Dr. Shepard** shall not make use of such information for personal use or benefit or for the use or benefit of any other person, firm, partnership, association, institution other than the University or assist others in doing so.

12. **Moving Expenses**

In accordance with University policies and practices and CRA Guidelines, the University will reimburse all reasonable moving costs, including costs associated with the sale of **Dr. Shepard's** principal residence, up to \$30,000 for relocation for him and his family.

13. **Termination**

- 13.1 This Agreement may be terminated in any of the following ways: (a) by the Board without cause (as described in 13.3 below); (b) by the Board for cause (as described in 13.2 below); (c) by mutual agreement between **Dr. Shepard** and the Board; (d) by **Dr. Shepard's**

resignation at any time upon six months prior written notice or such other period as is mutually agreeable to the Board and **Dr. Shepard**, it being understood and agreed that the Board may in its sole discretion waive the period of written notice once given in whole or in part and, if such waiver occurs, the Board shall provide payment in lieu of notice of the balance of the period of notice waived by the Board; or (e) upon the death of **Dr. Shepard**.

13.2. The Board may terminate **Dr. Shepard's** appointment as President & Vice-Chancellor and this Agreement without notice or pay in lieu of notice or any other obligations to **Dr. Shepard** at any time for cause. Such a termination for cause shall also terminate **Dr. Shepard's** appointment as a full professor with tenure and his employment with the University for all purposes. .

13.3 The Board may terminate **Dr. Shepard's** appointment at any time during the term of this Agreement, on a without cause basis, as follows:

- (a) Subject to 13.3(d), upon providing written notice of termination and twelve (12) months' severance pay in the form of salary continuation less applicable deductions, and twelve (12) months continuation of benefits for which he is eligible under paragraph 7 above except for long-term disability benefits, together with continuation of long-term disability benefits and pension participation only for the period corresponding to the statutory notice of termination period as required under the *Employment Standards Act*.
- (b) Such entitlements shall be inclusive of pay in lieu of notice and severance pay under the *Employment Standards Act, 2000*. For certainty, at no time shall the entitlements in this section 13.3 be less than what is required under the *Employment Standards Act, 2000* in respect of the statutory notice of termination period.
- (c) Upon the termination of this agreement without cause **Dr. Shepard** may choose either to continue in employment as a Full Professor with tenure under the collective agreement with UWOFA or to be deemed to have resigned from employment with the University.
- (d) Instead of the severance pay set out in (a) above **Dr. Shepard** may instead elect to take a twelve (12) month study leave at eighty 80% of the base salary that he received as President as of the date the term of President ended and to return thereafter to employment as a Full Professor with tenure under the collective agreement with UWOFA. During this period of study leave all other terms and conditions of employment shall be those generally applicable to tenured faculty members under the collective agreement with UWOFA.

13.4 **Dr. Shepard's** employment shall be deemed to be frustrated at the discretion of the University:

- (a) If he becomes eligible for long-term disability benefits under the University's long term disability policy and he has been unable, due to illness, disease, mental or physical disability or similar cause, to fulfill his obligations as President and Vice-Chancellor for any consecutive 6-month period or any cumulative period of 6 months (whether or not consecutive) in the preceding 12-month period; or

- (b) A court of competent jurisdiction has declared **Dr. Shepard** to be mentally incompetent or incapable of managing his affairs.

Upon the University exercising its discretion, **Dr. Shepard** will receive the entitlements set out in paragraph 13.3 above, it being understood that if prior to Dr. Shepard's employment being deemed to be frustrated Dr. Shepard became eligible for long-term disability benefits under the University's long-term disability policy the termination of Dr. Shepard's employment for frustration shall not affect Dr. Shepard's continued eligibility for long-term disability benefits.

14. **Acknowledgment**

Dr. Shepard hereby acknowledges that the payment of the monies in paragraph 13.3 above are reasonable and satisfy all claims, whether at common law, under the *Employment Standards Act, 2000* as amended from time to time, or any similar legislation which will be in force from time to time which **Dr. Shepard** may have for wrongful dismissal, constructive or otherwise, severance pay, termination pay or other damages arising from the termination of this Agreement.

15. **Entire Agreement**

This Agreement constitutes the entire agreement between the parties with respect to **Dr. Shepard's** employment. Any and all previous agreements, written or oral, expressed or implied, between the parties or on their behalf, relating to **Dr. Shepard's** employment are terminated and cancelled and each of the parties releases and forever discharges the other of and from all manner of actions, claims and demands whatsoever, under or in respect to any agreement.

16. **Place of Contract and Governing Law**

The parties agree that this Agreement is made in Ontario and that the terms of this agreement shall be governed by and construed in accordance with the Laws of Ontario and any claims made hereunder shall be brought in London, Ontario.

17. **Understanding and Acknowledgement**

Dr. Shepard acknowledges that he has reviewed, understands and agrees with the terms and conditions set out above. **Dr. Shepard** further acknowledges that he has sought or has had the opportunity to seek independent legal advice with respect to this Agreement.

[Signature page to 2018 Employment Agreement between Dr. Alan Shepard and the Board of Governors of the University of Western Ontario]

In witness whereof this Agreement has been executed by the parties hereto.

"Signature of Dr. Alan Shepard"

Dr. Alan Shepard

22 NOV 2018.

Date

"Name of Witness"

Witness Name (please print)

"Signature of Witness"

Witness

22 Nov 2018

Date

"Signature of Mr. Paul Jenkins"

Paul Jenkins
Chair of the Board of Governors

29 Nov. 2018

Date

"Signature of Witness"

Witness

29th Nov. 2018.

Date